



09-21-05

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JW**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Lincoln Rodon

Serial No.: 09/865,799

Filed: May 25, 2001

Title: TRAVEL VALUE INDEX

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Art Unit: 3627

Examiner: Gerald J. O'Connor

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**APPEAL BRIEF PURSUANT TO 37 C.F.R. §§1.191**

Appellants take this appeal from the March 8, 2005, Final Office Action in the above-identified application. A Notice of Appeal was filed on July 20, 2005. Appellants file this Appeal Brief in connection with the Notice of Appeal.

**1. REAL PARTY IN INTEREST**

The real party in interest is Amadeus NMC Holding, Inc., having a place of business at 9250 N.W. 36<sup>th</sup> Street, Miami, Florida 33178.

**2. RELATED APPEALS AND INTERFERENCES**

Appellants know of no other appeal or interference that will directly affect, or be directly affected by, or that will have a bearing on the Board's decision in the pending appeal.

**3. STATUS OF CLAIMS**

Claims 6-11 are pending in this application and are the claims from which this appeal is taken. These claims were finally rejected in an Office Action dated March 8, 2005 ("Final Office Action"). Claims 1-5 were previously withdrawn. A copy of the pending claims is attached as Appendix A.

4. **STATUS OF AMENDMENTS**

All amendments have been entered and there are no amendments pending.

5. **SUMMARY OF CLAIMED SUBJECT MATTER**

One aspect of the invention relates to a method for facilitating the selection of travel itineraries. Application, p. 4, ll. 10-11. The method includes: (1) selecting a travel criteria; (2) defining a traveler profile containing preferences associated with the travel criteria; (3) deriving preference factors based on the traveler preferences; (4) initiating a query of at least one travel information database for itineraries matching the selected travel criteria; and (5) calculating a travel value index for each travel itinerary using a travel value algorithm based on the preference factors. Application, p. 4, ll. 11-16.

6. **GROUND OF REJECTION TO BE REVIEWED ON APPEAL**

(a) **Claims 6-11 stand rejected under 35 U.S.C. § 103(a) as being obvious in light of U.S. Patent 4,862,357 (*Ahlstrom et al.*), in view of European Patent 1,076,307 (*Bunyan et al.*).**

The Appellants' claims pending on appeal are a unique method for facilitating selection of travel itineraries. Each traveler starts with a fixed optimal value and traveler preferences, as described below, are given a numeric value that are added or subtracted to the fixed optimal value to produce the travel value index. Only itineraries that meet the travel value index threshold are returned. *Neither Ahlstrom et al. or Bunyan et al., alone or in combination, disclose a fixed optimal value nor an index threshold value, therefore, an obviousness rejection is not supported.* The travel value index is calculated using travel criteria which are associated with defined traveler preferences. These preferences include a lowest fare multiplier, an available dates index, a non-stop service index, and an equipment type index. Neither Ahlstrom et al. or Bunyan et al. disclose an equipment type preference factor. The traveler preferences are defined and stored in a traveler profile. A query of at least one travel information database is initiated for itineraries matching the selected travel criteria with the preferences using an on-line search engine. Using a travel value algorithm, a travel value index is calculated. The calculation subtracts preference factors from and/or adds preference factors to a fixed optimal value of the travel value index depending on the criteria matching itineraries. Neither Ahlstrom

et al. or Bunyan et al., alone or in combination, disclose a fixed optimal value. One of the features of the current invention is the only itineraries returned are those having a travel value index satisfying a traveler defined travel value index threshold. Neither Ahlstrom et al. or Bunyan et al., alone or in combination, disclose a threshold value being an index value of the travel value index. Since the prior art is remiss in teaching or disclosing all of the claimed elements, the Examiner has failed to establish a prima facie case of obviousness.

## 7. **ARGUMENT**

The Examiner has not established a proper prima facie case of obviousness. According to United States Patent Office procedure, "The examiner bears the initial burden of factually supporting any prima facie conclusion of obviousness. If the examiner does not produce a prima facie case, the applicant is under no obligation to submit evidence of nonobviousness" MPEP § 2142 (emphasis added); *In re Bell*, 991 F.2d 781, 783, 26 USPQ2d 1529, 1531 (Fed. Cir. 1993) ("The PTO bears the burden of establishing a case of prima facie obviousness."); *see also, In re Glaug*, 283 F.3d 1335, 62 USPQ2d 1151 (Fed. Cir. 2002); *In re Rijckaert*, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993); *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992).

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

**(i) The prior art reference (or references when combined) do not teach or suggest all the claim limitations.**

Ahlstrom does not disclose the optimal value is fixed or the threshold value itineraries must surpass in order to be returned is an index value of the travel value index. See March 8,

2005 Office Action page 3. The Examiner combines Ahlstrom et al. (hereinafter “Ahlstrom”) with Bunyan (hereinafter “Bunyan”) which the Examiner characterizes as disclosing a similar method which includes the travel value algorithm is defined in a manner such that an optimal value for the travel value index is fixed and the threshold value itineraries must surpass in order to be returned is an index value of the travel value index. See March 8, 2005 Office Action page 4.

Applicant strongly disagrees that Bunyan discloses a fixed optimal value. Bunyan teaches the suitability rating is based on the location and the type of holiday. Nowhere does Bunyan disclose an optimal value of the suitability rating, whether the optimal value is fixed or not, or even how the suitability rating is calculated. There is discussion with regard to “weighting”, and “positive” and “negative” preferences but no discussion of how the suitability rating is calculated from the customer preferences and/or opinions. The Examiner cites to col. 5, lines 20-23, which discloses “[c]ustomers are able to click on the suitability rating given to obtain a breakdown of how it was derived, i.e. which factors gave positive and negative ratings towards the overall suitability rating.” There is no disclosure on how the overall suitability rating is calculated; it is a sort of “black box” calculation with Bunyan disclosing the end value (overall suitability rating), things contributing to the end value (preferences/opinions), but not how the end value is derived. There is no disclosure or suggestion of a fixed optimal value from which preferences are added or subtracted.

Furthermore, Bunyan does not disclose a threshold value itineraries must surpass in order to be returned is an index value of the travel value index. Bunyan does not disclose a threshold value nor that it is an index value of the travel value index. Bunyan discloses if there are more than a “specified number” of suitable holidays, the customer can sort or filter using criteria, but this sorting does not affect the suitability rating. See col. 4, lines 49-52. There is no suggestion of a traveler defined “minimum” value the suitability rating must have to be returned to the traveler. The “specified number” disclosed in Bunyan is not a threshold value; even if it were, it is not an index value of the travel value index.

Thus, the deficiencies of Ahlstrom, namely not disclosing a fixed optimal value or a threshold value itineraries must surpass in order to be returned is an index value of the travel value index, are not overcome when combined with Bunyan. “[W]hat must be found obvious

to defeat the patent is the claimed combination” *Kimberley-Clark Corp. V. Johnson & Johnson*, 745 F.2d 1437, 1448, 223 USPQ 603, 609-610 (Fed. Cir. 1985) and the claimed invention is not found in the combination of Ahlstrom and Bunyan.

Furthermore, the claimed method derives preference factors including a lowest fare multiplier, an available dates index, a non-stop service index, and *an equipment index* based on traveler preferences. Ahlstrom discloses factors including elapsed flight time, ground transportation costs, airline preference, and preferred route. Ahlstrom does not teach or suggest the travel policy includes preferences for an equipment type index.

Bunyan is directed to a method of rating holidays based on user preferences and other users’ feedback. Nowhere does Bunyan disclose or suggest deriving preference factors including an equipment index based on the traveler preferences.

The combination of Ahlstrom and Bunyan fails to disclose *three limitations*, i.e. a fixed optimal value, the threshold value itineraries must surpass in order to be returned is an index value of the travel value index, and a preference factor for an equipment type index. Thus, the rejection of the claims as obvious in light of Ahlstrom and Bunyan is improper. To establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974), See MPEP § 2142.

**(ii) There is no suggestion or motivation, either in Ahlstrom or Bunyan themselves or in the knowledge generally available to one of ordinary skill in the art to modify the reference or to combine reference teachings.**

Since Ahlstrom does not disclose the optimal value is fixed or the threshold value itineraries must surpass in order to be returned is an index value of the travel value index, the Examiner combined it with Bunyan which the Examiner alleges discloses the travel value algorithm is defined in a manner such that an optimal value for the travel value index is fixed and the threshold value itineraries must surpass in order to be returned is an index value of the travel value index. On page 4 of the Office Action dated March 8, 2005, the Examiner stated the combination is made “in order to not overwhelm the customer by bombarding the customer with too many results/itineraries at once by presenting only a manageable number of the best itineraries, and to facilitate an apples-to-apples comparison in travel value index between

disparate itineraries or other travel options.” “When the motivation to combine the teachings of the references is not immediately apparent, it is the duty of the examiner to explain why the combination of the teachings is proper. *Ex parte Skinner*, 2 USPQ2d 1788 (Bd. Pat. App. & Inter. 1986)” See MPEP § 2142.

The combination of Ahlstrom and Bunyan is not necessary to present only a manageable number of the best itineraries or to facilitate an apples-to-apples comparison. Ahlstrom does not overwhelm the customer by bombarding the customer with too many results/itineraries. Ahlstrom teaches “Program flow is next directed to test 174 where the number of fares already analyzed by the system is compared to a **preset** number to determine whether an adequate number of fares have been analyzed. Program flow is directed to test 120 of FIG. 4 if an adequate number of fares have been analyzed. Program flow is directed from test 174 to step 176 if more fares are to be analyzed.” See col. 8, lines 38, 45. Furthermore, Ahlstrom does an “apple to apple” comparison of the itineraries. “Step 218 takes each of the flight/fare alternatives that passes initial screening, and scores each flight/fare structure according to the predetermined, stored travel policy. In particular, each flight/fare structure is scored with reference to elapsed flight time, ground transportation costs associated with the particular flight, particular airline preference, route preference, and preweighted scoring of various flight/fare limitations.” See col. 10, lines 58-66.

Therefore if the Examiner is combining the references “in order to not overwhelm the customer by bombarding the customer with too many results/itineraries at once by presenting only a manageable number of the best itineraries, and to facilitate an apples-to-apples comparison in travel value index between disparate itineraries or other travel options.” See March 8, 2005 Office Action, page 4. There is no need for the combination since Ahlstrom already teaches presenting only a manageable number of the best itineraries (although not via a threshold value that must be surpassed) and facilitating an apples-to-apples comparison in travel value index between disparate itineraries or other travel options (dollar-to-dollar comparison).

Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See MPEP § 2143.01. “The test

for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art." *In re Kotzab*, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000).

(iii) **There was no reasonable expectation of success.**

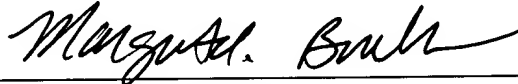
The Applicant has shown there was no motivation to combine Ahlstrom and Bunyan and even if the references were combined, the combination would not produce the claimed invention. If the combination of references does not produce the claimed invention, then there is no reasonable expectation of success. Therefore, the basic criteria for establishing a prima facie case of obviousness have not been met.

Since the Examiner has not established a prima facie case of obviousness, the claims are allowable. There was no motivation to combine the references, Ahlstrom already had a method to limit the number of returned itineraries and had an apples-to-apples comparison of the itineraries. Combining the references does not correct the deficiencies of Ahlstrom. Bunyan does not disclose a fixed optimal value or a threshold value itineraries must surpass in order to be returned being an index value of the travel value index. Bunyan does not even disclose a threshold value. Since Bunyan does not remedy the deficiencies of Ahlstrom, there is not an expectation of success. With all three indicia of obviousness not being met, the Examiner has not established a prima facie case of obviousness.

For the reasons set forth above, the appealed Claim 6 is not rendered obvious under 35 U.S.C. § 103(a) by Ahlstrom in view of Bunyan. As for dependent claims 7-11, although they recite independently allowable subject matter, these claims depend from claim 6 and are therefore allowable for at least the same reasons. If an independent claim is nonobvious under 35 U.S.C. § 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). Accordingly, the final rejection of these claims should be reversed.

The fee of \$500.00 required by 37 C.F.R. § 41.20(b)(2) is enclosed herewith. The Commissioner is hereby authorized to charge Deposit Account No. 50-3420, reference 31175934-066006(MAB) for any additional fees inadvertently omitted which may be necessary.

Respectfully submitted,



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Date: Sept. 21, 2005

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## **APPENDIX A: CLEAN COPY OF CURRENT PENDING CLAIMS**

1. (Withdrawn) A computer system for hosting an on-line travel planning application containing a search value program to facilitate selection of travel itineraries, the computer system comprising:

a central processing unit; and

a storage unit connected to said central processing unit for storing said search value program thereon, wherein said search value program is configured to:

allow a traveler to select a travel criteria and to set traveler preferences therefore in a traveler profile,

derive preference factors including a lowest fare multiplier, an available dates index, a non-stop service index, and an equipment type index for said travel criteria based on said traveler preferences,

initiate a query of at least one travel information database for itineraries matching said selected travel criteria using an on-line search engine,

calculate a travel value index for each itinerary using a travel value algorithm that subtracts preference factors from, or adds preference factors to, or both, an optimal value of said travel value index depending on said criteria matching itineraries, and

return only itineraries where said travel value index thereof satisfies a traveler defined threshold.

2. (Withdrawn) The computer system according to claim 1, wherein said search value program is further configured to cancel before final completion of said query any itineraries that cannot satisfy said traveler defined threshold.

3. (Withdrawn) The computer system according to claim 1, wherein said search value program is a Web based application.

4. (Withdrawn) The computer system according to claim 1, wherein said search value program allows said traveler to select said travel criteria and set said travel preferences via the Internet.

5. (Withdrawn) The computer system according to claim 1, wherein said travel value algorithm is defined in a manner such that an optimal value for said travel value index is approximately 100 percent.

6. (Previously presented) A method for facilitating selection of travel itineraries, comprising:

selecting one or more travel criteria;

allowing a traveler to define traveler preferences associated with said travel criteria and storing said traveler preferences in a traveler profile;

deriving preference factors including a lowest fare multiplier, an available dates index, a non-stop service index, and an equipment type index for said travel criteria based on said traveler preferences;

initiating a query of at least one travel information database for itineraries matching said selected travel criteria using an on-line search engine;

calculating a travel value index for each itinerary using a travel value algorithm that subtracts preference factors from, or adds preference factors to, or both, a fixed optimal value of said travel value index depending on said criteria matching itineraries; and

returning only itineraries where said travel value index thereof satisfies a traveler defined travel value index threshold.

7. (Original) The method according to claim 6, further comprising canceling before final completion of said query any itineraries that cannot satisfy said traveler defined threshold.

8. (Original) The method according to claim 6, wherein said travel value algorithm is defined in a manner such that an optimal value for said travel value index is approximately 100 percent.

9. (Previously presented) The method according to claim 6, wherein said steps of selecting, allowing, deriving, and initiating are performed over the Internet using a Web browser.

10. (Previously presented) The method according to claim 9, further comprising allowing said traveler to modify said traveler preferences in real time over the Internet using said Web browser and repeating said deriving, initiating, calculating, and returning based on modified preferences.

11. (Previously presented) The method according to claim 9, wherein the traveler preferences include preferences involving fare, availability, service type, and equipment type.



<b>Effective on 12/08/2004.</b> <b>Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).</b> <b>FEE TRANSMITTAL</b> <b>For FY 2005</b>		<b>Complete if Known</b>	
		Application Number	09/865,799
		Filing Date	May 25, 2001
		First Named Inventor	Lincoln Rodon
		Examiner Name	Gerald J. O'Connor
<input type="checkbox"/> Applicant claims small entity status. See 37 CFR 1.27	Art Unit	3627	
<b>TOTAL AMOUNT OF PAYMENT</b>	<b>(\$)</b> 500.00	Attorney Docket No.	31175934.066006

<b>METHOD OF PAYMENT</b> (check all that apply)	
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<input type="checkbox"/> Money Order	<input type="checkbox"/> None
<input type="checkbox"/> Other (please identify): _____	
<input checked="" type="checkbox"/> Deposit Account	Deposit Account Number: <b>50-3420</b> Deposit Account Name: <b>Baker &amp; McKenzie LLP</b>
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<b>FEE CALCULATION</b>							
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	<b>FILING FEES</b>		<b>SEARCH FEES</b>		<b>EXAMINATION FEES</b>		
		<u>Small Entity</u>		<u>Small Entity</u>		<u>Small Entity</u>	
<b>Application Type</b>	<b>Fee (\$)</b>	<b>Fee (\$)</b>	<b>Fee (\$)</b>	<b>Fee (\$)</b>	<b>Fee (\$)</b>	<b>Fee (\$)</b>	<b>Fees Paid (\$)</b>
Utility	300	150	500	250	200	100	_____
Design	200	100	100	50	130	65	_____
Plant	200	100	300	150	160	80	_____
Reissue	300	150	500	250	600	300	_____
Provisional	200	100	0	0	0	0	_____
<b>2. EXCESS CLAIM FEES</b>							
						<b>Fee (\$)</b>	<b>Small Entity Fee (\$)</b>
<b>Fee Description</b>							
Each claim over 20 (including Reissues)						50	25
Each independent claim over 3 (including Reissues)						200	100
Multiple dependent claims						360	180
<b>Total Claims</b>		<b>Extra Claims</b>	<b>Fee (\$)</b>	<b>Fee Paid (\$)</b>	<b>Multiple Dependent Claims</b>		
_____ - 20 = _____		x _____	= _____	0.00	<b>Fee (\$)</b>		<b>Fee Paid (\$)</b>
<b>Indep. Claims</b>		<b>Extra Claims</b>	<b>Fee (\$)</b>	<b>Fee Paid (\$)</b>			
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<b>3. APPLICATION SIZE FEE</b>							
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<b>Total Sheets</b>	<b>Extra Sheets</b>	<b>Number of each additional 50 or fraction thereof</b>		<b>Fee (\$)</b>	<b>Fee Paid (\$)</b>		
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<b>4. OTHER FEE(S)</b>							<b>Fees Paid (\$)</b>
Appeal Brief							500.00

<b>SUBMITTED BY</b>			
Signature		Registration No. (Attorney/Agent)	28,708
Name (Print/Type)	Margaret A. Boulware	Telephone (713)	427-5003
		Date	9/20/05



Application No. (if known): 09/865,799

Attorney Docket No.: 31175934.066006

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<b>TRANSMITTAL FORM</b>  (to be used for all correspondence after initial filing)		Application Number	09/865,799
		Filing Date	May 25, 2001
		First Named Inventor	Lincoln Rodon
		Art Unit	3627
		Examiner Name	Gerald J. O'Connor
Total Number of Pages in This Submission	13	Attorney Docket Number	31175934.066006

ENCLOSURES (Check all that apply)		
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<div>Remarks</div>		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT	
Firm or Individual name	BAKER & MCKENZIE LLP Margaret A. Boulware- Reg. No. 28,708
Signature	<i>Margaret A. Boulware</i>
Date	<i>Sept. 20, 2005</i>

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Dated: <u>9/20/05</u>	Signature: <i>Jesse Taylor</i> (Jesse Taylor)